

SP

Notice of Allowability	Application No.	Applicant(s)
	10/609,329	BATTERBERRY ET AL.
	Examiner Tung S. Lau	Art Unit 2863

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to 02/17/2006.

2. The allowed claim(s) is/are 38-48 and 54-75.

3. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of the:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) hereto or 2) to Paper No./Mail Date _____.

(b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. <input type="checkbox"/> Notice of References Cited (PTO-892)	5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____.
3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____.	7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment
4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9. <input type="checkbox"/> Other _____.

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Lance R. Sadler Reg. # 38,605 on Feb. 21-2006

The application has been amended as follows:

- In claim 66, line 1, replace 54 with 65
- In claim 67, line 1, replace 54 with 65
- In claim 68, line 1, replace 56 with 67
- In claim 69, line 1, replace 54 with 65
- In claim 70, line 1, replace 54 with 65
- In claim 71, line 1, replace 54 with 65
- In claim 72, line 1, replace 54 with 65
- In claim 73, line 1, replace 54 with 65
- In claim 74, line 1, replace 54 with 65
- In claim 75, line 1, replace 54 with 65

Remarks: Amendments to claims 66-75 were made to correct the proper dependency.

Allowable Subject Matter

2. Claims 38-48 and 54-75 are allowed.

Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance:

Independent claims 38, 54 and 65 contain allowable subject matter. None of the prior art of record shows or fairly suggests the claimed invention.

Regarding claim 38:

Please see previous office action and applicant's response filed on 02/17/2006 for reason for allowance.

Claims 39-48 are allowed due to their dependency on claim 38.

Regarding claim 54:

The primary reason for the allowance of claim 54 is the inclusion of a computer-implemented method including if the network can viably support transmission of the content data at the actual transmission rate, requesting the server to transmit subsequent content file data at a rate that is not greater than the actual transmission rate. It is these features found in the claim, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes this claim allowable over the prior art.

Claims 55-64 are allowed due to their dependency on claim 54.

Regarding claim 65:

The primary reason for the allowance of claim 65 is the inclusion of a system including if the network can viably support transmission of the content data at the actual transmission rate, requesting the server to transmit subsequent content file data at a rate that is not greater than the actual transmission rate. It is these features found in the claim, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes this claim allowable over the prior art.

Claims 66-75 are allowed due to their dependency on claim 65.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL

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